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No. 302

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, Petitioner,

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO.

## BRIEF FOR RESPONDENT.

PEERLESS PRINTING CO., DENVER

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## BRIEF FOR RESPONDENT.

### STATEMEST OF THE CASE

The material facts are not in dispute. As alleged in the complaint (R. 2-6) and admitted by the answer (R. 6-8), and as stated by the petitioner (P. 2-4), they are as follows:

The petitioner, a commissioned officer in the United States Air Force, is a citizen, resident and legal voter of the State of Louisiana. During all of the year 1948, the petitioner was assigned to duty at Lowry Field, an installation of the United States Air Force in the State of Colorado; and during all of the year 1948, the petitioner lived in a privately owned apartment in the City and County of Denver. The respondent levied a tax amounting to $23.51 upon the tangible personal property (household furniture and furnishings) owned exclusively by the petitioner and possessed and maintained by him at his apartment in the City and County of Denver during the whole of the year

1948. The petitioner paid the tax under protest (R. 5) and brought suit to recover the tax (R. 4-5). The trial court entered judgment in favor of the petitioner (R. 8), and the Supreme Court of Colorado by a unanimous decision reversed the trial court upon the reasoning that the purpose of the Soldier's and Sailor's Civil Relief Act was to prevent multiple taxation rather than to grant an exemption from all taxation; and that since the State of Louisiana had not taxed the tangible personal property which had its actual physical situs in Colorado, the State of Colorado could levy a tax on such property (R. 12-16).

## SUMMARY OF ARGUMENT

The pertinent part of Section 514(1) of the Soldiers' and Sailors' Civil Relief Act was adopted by an amendment which has as its purpose the prevention of multiple taxation. That this was the intention of Congress is plainly evidenced by the legislative history, by the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented, by the committee reports and the reports of the sponsors, and by construing the meaning of the words used to effectuate the intent of the lawmakers.

The decision of the Colorado Supreme Court in this case merely holds that a serviceman's personal tangible property which has not been taxed in any other state, and which has been physically present in the State of Colorado during all of the year 1948, can be taxed for that year by the State of Colorado. This holding construes the Soldiers' and Sailors' Civil Relief Act as prohibiting multiple taxation and not as providing for an exemption from all taxation. No question of multiple taxation arises under the facts of this case and the question of the possibility of multiple taxation in other cases is, therefore, a hypothetical question which cannot be decided in this case.

If the Soldiers' and Sailors' Civil Relief Act is construed as intended to exempt the tangible personal property of a serviceman from state and local taxation during the time such property is actually within the taxing jurisdic-

tion of such state, then the said Act is unconstitutional for the reason that any attempt by Congress to extend the mantle of governmental immunity from state taxation to such a remote matter as the private personal property of a serviceman would be an invalid invasion of the reserved constitutional powers of the states to levy and collect non-discriminatory taxes.

## ARGUMENT

### I. THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT PROHIBITS MULTIPLE TAXATION BUT IT DOES NOT EXEMPT PROPERTY OF A SERVICEMAN FROM ALL TAXATION BY STATES OTHER THAN HIS STATE OF PERMANENT RESIDENCE.

If a statute is not clear and unambiguous, then the court in construing the statute should consider the intention of Congress as evidenced, (1) by the legislative history; the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented [1]; the Committee Reports and the reports of the sponsors [2]; and (2) by construing the meaning of the words to effectuate the intent of the lawmakers, such meaning to be arrived at not only by a consideration of the words themselves, but by considering the purposes of the law.[3]

#### 1. LEGISLATIVE HISTORY

The Soldiers' and Sailors' Civil Relief Act of 1940 specifically stated that its purpose was to *suspend enforcement of civil liabilities,* in certain cases, of persons in the military service of the United States, in order to enable such persons to devote their energy to the defense needs of the nation, and to this end the following provisions are made for the *temporary suspension* of legal proceedings and transactions which may prejudice the civil rights of persons in such service. ***." (Italics supplied. c. 888, §100, 54 Stat. 1178, appendix, *infra,* p. 35).

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[1] United States v. Champlin Refining Company, 341 U. S. 290.
[2] Schwegmann Brothers v. Calvert Distillers Corp., 341 U. S. 384.
[3] Vermilya-Brown Company, Inc., v. John Joseph Connell, 335 U. S. 377.

pendix, *infra*, p. 35) to be to "relieve persons in service from liability of double taxation" and so "that the military personnel concerned should not be subjected to multiple taxation of personal property by the various states and should be given the same protection as to personal property taxes as is now provided in respect of income taxes."

Likewise, it was stated in the report of the House Military Affairs Committee that the purpose of this 1944 amendment was to "relieve persons in the service from liability of double taxation by being moved from one state to another under orders." (Appendix *infra*, p. 36.)

It will thus be seen that the purpose of the 1940 act was to *suspend enforcement of civil liabilities;* that the 1942 amendment was designed to *prevent multiple state taxation;* and that the 1944 amendment was adopted to *prevent multiple taxation* and to give the serviceman the *same protection as to personal property taxes as is provided in respect of income taxes.* Nowhere does it appear that Congress was intending to *exempt* the serviceman from personal property taxes or to provide that he could escape all taxation by moving his personal property out of the state of his domicile. The act does not so state. If such had been the intention of Congress, it would have been easy to have stated specifically that personal property should not be subject to taxation in any state except the state of domicile.

After making this same general finding as to the purpose of the act, the Colorado Supreme Court made this statement:

> "It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees

leading up to the enactment of the amendment, is there any reference to granting exemption from taxation." (R. 16).

It also should be noted that section 2 of this act, which was added in its entirety by the 1944 amendment (*supra* p. 5), stated that the term personal property should include motor vehicles and that the term taxation should include licenses and fees thereon, "provided that the license, fee, or excise required by the state * * * of which the person is a resident or in which he is domiciled has been paid." The wording of this section clearly shows that Congress was trying to prevent multiple taxation.

If Congress had intended to give an exemption from taxation it would have exempted the personal property of a serviceman from all taxation in his state of domicile as well as in the state where he was located by reason of such service. The liability for taxes in the state of domicile would be just as worrisome to a serviceman as the liability for taxes in the state of temporary location, even though in both the serviceman might be entitled to a stay of the sale for taxes or an additional period of redemption after discharge, and if Congress had desired to give an exemption from taxation in the state of temporary location, where no tax was or could be levied by the state of domicile, it seems reasonable to think that they would have also exempted personal property from taxation in the state of domicile. It is therefore reasonable to say that they were attempting to do what was stated by all of the sponsors, i.e., to prevent multiple taxation.

**2. CONSTRUING THE MEANING OF THE WORDS USED.**

Not only do the congressional reports show that the purpose of the act was to prevent multiple taxation rather than to grant exemption from taxation, but the wording of the act itself shows that the purpose was to prevent multiple taxation. The act provides that "for the purposes of taxation in respect to any person, or his personal property * * * by any State * * * such person shall not be *deemed* to have lost a residence or domicile in any state * * * *solely* by reason

of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in * * * any other state * * * while, and *solely* by reason of being, so absent. * * * For the purposes of taxation in respect of the personal property * * * of any such person by any state * * * of which such person is not a resident or in which he is not domiciled * * * personal property shall not be *deemed* to be located or present in or to have a situs for taxation in such state * * * ."

A statute ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant. *James v. Dubois, 1 Harr.* (N.J.) 285; *Hutchen v. Niblo,* 4 Blackf. 148; Opinion of the Justices, 22 Pick. 571; *United States v. Worner,* 4 McL. 463; *McHay v. Detroit and Erin Plank R.,* 2 Mich. 138; *United States v. Ragsdale,* 1 Hemp. 497; *Coffin v. Rich,* 45 Me. 507, 1 Mass. 324.

Why did Congress use the word "deem?" This Court has said that it is proper to construe the meaning of words to effectuate the intent, such meaning to be arrived at not only by consideration of the words themselves but by considering the purposes of the law. *Vermilya-Brown Company, Inc. v. John Joseph Connell,* 335 U. S. 377.

It is well settled that the situs of tangible personal property for purposes of taxation is the place where the tangible personal property is located, and that the state of domicile cannot tax such property when it is located in another state.[4] In the case of intangible property the maxim *mobilia sequuntur personam* is applied where intangible property is incapable of acquiring a situs separate from the domicile of the owner. However, the maxim has never been applied so as to prevent a state from taxing property having an actual situs in that state nor to permit the state of domicile to tax tangible personal property which has acquired an actual situs elsewhere.

"The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of

[4] Union Refrig. Transit Co. v. Kentucky, 199 U. S. 194, Frick v. Pennsylvania, 268 U. S. 473, Curry v. McCanless, 307 U. S. 357.

a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicile of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance." 110 A. L. R. 715.

"It is generally agreed that the maxim, 'mobilia sequuntur personam,' is a fiction adopted for purposes of convenience in fields other than the taxation of the owner's property, and while it is still applicable in the field of taxation where it does not contravene fact, as where because of the intangible character of the property it is incapable of acquiring a situs separate from the domicile of the owner, it is inapplicable where, contrary to the principle it establishes, the property has acquired an actual situs in a jurisdiction other than the domicile of the owner.

"Consequently, notwithstanding the maxim, the power to tax tangible personal property which has acquired an actual permanent situs elsewhere has been denied to the domicile of the owner, as a matter either of constitutional law or of statutory construction; the general theory being that in such a case the domicile does not give protection, which is the consideration for the tax. *Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U. S. 194 * * *." 110 A. L. R. 709.

The word "deem" was no doubt used to prevent the use of this legal fiction of *mobilia sequuntur personam*. This word first appeared in the amendment of 1942 concerning the taxation of income, an intangible, and Congress no doubt meant that the doctrine of *mobilia sequuntur personam* should not be used so as to permit the double taxation of a serviceman's income. The amendment of 1944 used the same wording. Where the same word appears more than once in a statute, it is certainly reasonable to assume that Congress meant the word to have the same meaning. It

also should be noted that the word "solely" is used in the act. The person shall not be deemed to have lost a residence or domicile *solely* by reason of being absent therefrom, or to have acquired a residence or domicile in another state, while, and *solely* by reason of being so absent.

The Colorado Supreme Court held that the word "deemed" meant presumed. This is the usual meaning given to the word by courts, some cases holding that it means a rebuttable presumption,[5] and others holding that it means a conclusive presumption.[6] Whether the presumption is rebuttable or conclusive is not important in this case because the word is used in the negative as "shall not be deemed" and also because of the word "solely" appearing later in the same sentence.

In *Zimmerman v. Zimmerman*, 175 Ore. 585, 155 Pac. (2d) 293, the court said:

> "We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed to have acquired a* residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before the words 'in consequence of' and that such constitutional provisions do not prevent the acquisition of domicile by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

In the present case there is no need to supply a modifying adverb because of the phrase "solely by reason of being absent therefrom." "Solely" means without another; singly; alone. To say that for the purpose of taxation a person's property shall not be "deemed" to be located in a state of non-residence "solely" because the owner of the property is in that state, implies that the presence of the owner, to-

[5] Erickson v. Erickson, 167 Ore. 1, 115 Pac. (2d) 172; Williamson v. Winningham, 199 Okla. 393, 186 Pac. (2d) 644.

[6] Waldron v. People, 84 Colo. 1; Harder v. Irwin, 288 Fed. 402; United States v. Davis, 50 Fed. (2d) 903.

gether with other facts which gave tangible personal property a legal situs for taxation, would justify the imposition of such a tax. That is the present case.

### 3. LIBERAL CONSTRUCTION.

We do not disagree with the petitioner's statement that "exemptions expressly provided by Congress for federal agencies and instrumentalities will not be whittled away by the courts." However, that statement is based upon the false premise that in this case an exemption has been expressly established by this act of congress. Nor do we disagree with the general statements that this court has said that the Soldiers' and Sailors' Civil Relief Act should be read with friendly eyes and liberally construed to protect the man in military service. However, this Court has also said, in construing this Soldiers' and Sailors' Civil Relief Act, that "the judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A *casus omissus* does not justify judicial legislation." *Ebert v. Poston*, 266 U. S. 548. The petitioner is asking the Court to construe the act so as to supply an exemption which is not stated in the act. He is asking the court to construe the act so as to establish an exemption by judicial legislation when the intention of the legislature was to prevent multiple taxation.

It is also a familiar rule of construction that since the taxing power is necessary to the state, acts limiting such power must be narrowly construed. *Christ Church v. Philadelphia* 24 How. 300, 16 L. ed: 602; *Wiggins Ferry Co. v. City of East St. Louis*, 107 U. S. 365.

In *Bank of Commerce v. Tennessee*, 104 U. S. 493, the following statement appears:

> "That statutes imposing restrictions upon the taxing power of a State, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, is a familiar rule. Against the power nothing is to be taken by inference and presumption. Where a doubt arises as to the existence

of the restriction, it is to be decided in favor of the State."

4. HYPOTHETICAL CASE.

There is no question of double or multiple taxation in this case because the tangible personal property was in the State of Colorado during the entire year of 1948, and there was no contention that the property had been or could have been taxed by the State of Louisiana. Therefore, the question of whether a serviceman might be subject to double taxation is a purely hypothetical one and this Court should not decide this question in this case. *Champlin Refining Co. v. United States*, 329 U. S. 29.

Even if the objection as to double taxation should be good as to some servicemen under other circumstances, the petitioner is not in that class and therefore he cannot raise any question as to double taxation. *Heald v. District of Columbia*, 259 U. S. 114. In *Darnell v. Indiana*, 226 U. S. 390, the Court says:

> "The most serious aspect of this objection is that the statutes of Indiana do not make allowance if a foreign corporation has property taxed within the state. But, as to this, it is enough to say that, however the statutes may be construed in a case of that sort, the plaintiffs in error do not show that it is theirs, and that, if they do not belong to the class for whose sake the constitutional protection would be given, if it did, they cannot complain on that ground."

II. IF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT IS CONSTRUED AS INTENDED TO EXEMPT THE TANGIBLE PERSONAL PROPERTY OF A SERVICEMAN FROM STATE AND LOCAL TAXATION DURING THE TIME SUCH PROPERTY IS ACTUALLY WITHIN THE TAXING JURISDICTION, THEN THE SAID ACT IS UNCONSTITUTIONAL.

It is the respondent's contention that any attempt by congress to extend the mantle of governmental immunity from state taxation to such a remote matter as the private personal property of a service man would be an invalid in-

vasion of the reserved constitutional powers of the States to levy and collect nondiscriminatory taxes.

It is axiomatic that the United States is a government of limited, enumerated and delegated powers [7]; that it cannot exercise any powers not granted by the Federal Constitution either in express words or by necessary implication [8]; and that all others powers are reserved to the states.[9]

It is equally well settled that the power to tax property and persons within their respective limits is original in the states and has never been surrendered [10]; that the states have the attribute of sovereign powers in levying and collecting such taxes [11]; and that the taxing power is fundamental to the existence of the states.[12]

**1. A STATE AND ITS POLITICAL SUBDIVISONS HAVE GENERAL POWER TO TAX TANGIBLE PERSONAL PROPERTY LOCATED THEREIN.**

It is necessary to keep in mind at all times during the consideration of the problem here involved, that the tax levied by the respondent is a non-discriminatory tax on personal property physically located within the territorial jurisdiction of the respondent. The tax on the property remains the same whether the owner thereof be a resident or a non-resident. A tax is not levied against the owner merely because he is at the time in Colorado, but because the property taxed is actually present in the State of Colo-

[7] United States v. Butler, 297 U. S. 1, 56 Sup. Ct. 312, 80 L. ed. 477; Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 Sup. Ct. 837, 79 L. ed. 1570; Railroad Retirement Board v. Alton Railroad Company, 295 U. S. 330, 55 Sup. Ct. 758, 79 L. ed. 1468.

[8] Carter v. Carter Coal Company, 298 U. S. 238, 56 Sup. Ct. 855, 80 L. ed. 1160; United States v. Butler, 297 U. S. 1, 56 Supt. Ct. 312, 80 L. ed. 477; United States v. Cruikshank, 92 U. S. 542, 23 L. ed. 588.

[9] United States v. Butler, 297 U. S. 1, 56 Sup. Ct. 312, 80 L. ed. 477.

[10] Thomson v. Union Pacific Railroad Company, 9 Wall. (U. S.) 579, 19 L. ed. 792; Lane County v. Oregon, 7 Wall. (U. S.) 71, 19 L. ed. 101; Ward v. Maryland, 12 Wall. (U. S.) 418, 20 L. ed. 449.

[11] Ohio Oil Company v. Conway, 281 U. S. 146, 50 Sup. Ct. 310, 74 L. ed. 775; City of St. Louis v. Wiggins Ferry Company, 78 U. S. 423, 11 Wall. 423, 20 L. ed. 192; Gilman v. City of Sheboygan, 67 U. S. 510, 2 Black. 510, 17 L. ed. 305.

[12] State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527, 51 Supt. Ct. 540, 75 L. ed. 1248.

rado. The petitioner's property was present in the City and County of Denver during the entire taxing year of 1918.

The Supreme Court of the United States has consistently held that tangible personal property such as here involved is taxable by that state within which the property is actually located, regardless of the residence or domicile of the owner thereof.

Although many decisions throughout the years have discussed the theory of taxation of tangible personal property, perhaps the fullest consideration and review thereof is to be found in the case of *Curry v. McCanless*, 307 U. S. 357, decided in 1938. That decision, on its facts deals with the taxation of intangible personal property, but it states the following principles as to taxation of tangible personal property at pages 363-366:

> "That rights in tangibles—lands and chattels—are to be regarded in many respects as localized for purposes of the jurisdiction of a court to make disposition of putative rights in them, for purposes of conflict of laws, and for purposes of taxation, is a doctrine generally accepted in the common law and in other legal systems before the adoption of the Fourteenth Amendment and since. * * *
>
> "The power of government and its agencies to possess and to exclude others from possessing tangibles, and thus to exclude them from enjoying rights in tangibles located within its territory, affords adequate basis for an exclusive taxing jurisdiction. * * *
>
> "Other states have been said to be without jurisdiction and so without constitutional power to tax tangibles if, because of their location elsewhere, those states can afford no substantial protection to the rights taxed and cannot effectively lay hold of any interest in the property in order to compel payment of the tax. See *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 202, 50 L. Ed. 150, 152, 26 S. Ct. 36, 4 Ann. Cas. 493; *Frick v. Pennsylvania*, 268

U. S. 473, 489 et seq., 69 L. Ed. 1058, 1062, 45 S. Ct. 603, 42 A. L. R. 316."

**2. A State Property Tax Is Not Prohibited by the Federal Constitution Unless it Interferes With the Performance of Federal Functions.**

Probably the leading decision of the United States Supreme Court upon the question of implied constitutional immunity from state taxation is *Union Pacific Railroad Company v. Peniston*, 85 U. S. 5, decided in 1873. That case involved the right of Kansas to tax the real and personal property of the Union Pacific Railroad Company actually located in the State of Kansas. For all purposes of the decision, the Supreme Court considered the railroad to have been a corporation organized under a congressional act and acting as an agent of the Federal Government. It was further assumed that although the railroad itself owned the property being taxed, such property was actually being used in connection with railroad's function as an agent of the Federal Government. In affirming the right of Kansas to tax the real and personal property of the railroad located in that State, the Court stated:

(p. 29) "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. * * *

(p. 30-31) "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Con-

stitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which the Federal taxes may be laid. The states are, and they must ever be, co-existent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the states, or prevent their efficient exercise. * * *

(p. 33) "It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue without any corresponding advantage to the United States. * * *

(p. 36-37) "All state taxation which does not impair the agent's efficiency in the discharge of his duties to the government has been sustained when challenged, and a tax upon his property generally has not been regarded as beyond the power of a state to impose. In *Bk. v. Ky.*, 9 Wall, 353, 19 L. ed. 701; when the right to tax national banks was under consideration, it was asserted by us that the doctrine cannot be maintained that banks, or other corporations or instrumentalities of the government, are to be wholly withdrawn from the operation of state legislation. Yet it was conceded that the agencies of the Federal Government are uncontrollable by state legislation, so far as it may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government.

"It is, therefore, manifest that exemption of Fed-

eral agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers.

"In this case the tax laid upon the property of the Railroad Company precisely as was the tax complained of in *Thompson v. R. Co.* It is not imposed upon the franchise or the right of the company to exist and perform the functions for which it was brought into being. Nor is it laid upon any act which the company has been authorized to do. It is not the transmission of dispatches nor the transportation of United States mails, or troops, or munitions of war that is taxed, but it is exclusively the real and personal property of the agent, taxed in common with all other property in the state of a similar character. It is impossible to maintain that this is an interference with the exercise of any power belonging to the general government; and if it is not, it is prohibited by no constitutional implication."

There is an important distinction to be noted between the facts of the *Union Pacific* case and those in the present case, making our position even stronger here. In the *Union Pacific* case, not only did the Supreme Court consider for all purposes of the decision that the defendant, whose property was located in Kansas and being taxed by Kansas, was acting as an agent of the Federal government, but also that the specific property being taxed was actually used in carrying out its functions as an agent of the Federal Government. In the present case, regardless of whether the plaintiff owner of personal property located in Colorado was an agent

of the Federal Government, there is no doubt that the personal property assessed for taxation by the City and County of Denver was not used in any manner in connection with the petitioner's function as a member of the military service. The property was located in the residence of the plaintiff and used only for his and his family's own individual purposes.

The *Union Pacific* case has been cited innumerable times by the United States Supreme Court since 1873, but we will refer only to a few of the more recent decisions indicating not only that the principle there laid down has remained unchanged but that it has been used as a stepping stone for ever broader principles relative to the power of state taxation.

In *Tabor v. Indian Territory Illuminating Oil Co.* (1936) 300 U. S. 1, the Court held that the State of Oklahoma could tax certain personal property of the oil and gas leases of Indian lands, even though the lessee was acting as a Federal instrumentality, stating at pages 3 and 4:

> "Our decisions distinguished between an non-discriminatory tax upon the property of an agent of government and one which imposes a direct burden upon the exertion of governmental powers. In the former case where there is only a remote, if any, influence upon the exercise of governmental functions, *we have held that a non-discriminatory ad valorem tax is valid, although the property is used in the operations of the governmental agency.* This distinction, recognized Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 436, 4 L. ed. 579, 608, was stated and applied after full consideration in *Thomson v. Union P. R. Co.*, 9 Wall 579, 591, 19 L. ed. 792, 798, and *Union P. R. Co. v. Peniston*, 18 Wall, 5, 31-36, 21 L. ed. 787, 792, 793. Recent illustrations are found in *Alward v. Johnson*, 282 U. S. 509, 514, 75 L. ed. 496, 500, 51 S. Ct. 273, 75 A. L. R. 9, where the tax which was sustained was laid upon property used in operating an automotive stage line between points

in California under a mail carrier's contract; and in *Tirrell v. Johnston*, 293 U. S. 533, 79 L. ed. 641, 55 S. Ct. 238, where a tax known as the 'gasoline road toll' was held to be payable by a rural mail carrier who delivered the mail by means of his own motor vehicle."

The *Union Pacific* case was quoted at great length in 1937 in *James v. Dravo Contracting Co.*, 302 U. S. 134, 153-155, 160, 82 L. ed. 155, 58 Sup. Ct. 216, where it was held that the State of West Virginia could constitutionally tax the gross receipts derived from activities within the borders of the state by one who had contracted with the United States for the construction of certain locks and dams on navigable streams within the state. In holding that the tax did not interfere with the exercise of Federal powers in such a way as to be invalid, the Court stated:

"The question of the taxability of a contractor upon the fruits of his services is closely analogous to that of the taxability of the property of the contractor which is used in performing the services. His earnings flow from his work; his property is employed in securing them. In both cases, the taxes increase the cost of the work and diminish his profits. Many years ago the Court recognized and enforced the distinction between a tax laid directly upon a government contract or an instrumentality of the United States and a tax upon the property employed by an agent or contractor in performing services for the United States. 'Taxation of the agency is taxation of the means, taxation of the property of the agent is not always, or generally, taxation of the means.' *Thompson v. Union P. R. Co.*, 9 Wall. 579, 591, 19 L. ed. 792, 798. In expounding the grounds for the conclusion that the property of the contractor was taxable, the Court envisaged the serious consequences which would follow if immunity were maintained. In *Union Pac. R. Co. v. Peniston*, 18 Wall. 5, 33, 36, 21 L. ed. 787, 792, 793, the Court said: 'It may, therefore, be considered as settled that no constitutional

implications prohibit a State tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the States in the collection of their necessary revenue without any corresponding advantage of the United States. A very large proportion of the property within the States is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the national services. So are steamboats, horses, stagecoaches, foundries, ship yards, and multitudes of manufacturing establishments. They are the property of natural persons, or of corporations, who are instruments or agents of the General government, and they are the hands by which the objects of the government are obtained. Were they exempt from liability to contribute to the revenue of the States it is manifest the State governments would be paralyzed. While it is of the utmost importance that all the powers vested by the Constitution of the United States in the General government should be preserved in full efficiency, and while recent events have called for the most unembarrassed exercise of many of those powers, it has never been decided that the State taxation of such property is impliedly prohibited'."

In *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, decided in 1937, the question arose whether the recipient of proceeds from an oil and gas lease of Wyoming School Land was subject to Federal income taxes on such proceeds. In holding that the effect of the Federal tax on the state government was so indirect and remote as not to give rise to any constitutional immunity, the Court stated at page 385:

"In numerous decisions we have had occasion to declare the competing principle, buttressed by the

most cogent considerations, that the power to tax should not be crippled by extending the constitutional exemption from taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the government instrumentality and there is only remote, if any, influence upon the exercise of the functions of government.' *Willcuts v. Bunn*, 282 U. S. 216, 225, 75 L. ed. 304, 306, 51 S. Ct. 125, 71 A. L. R. 1260, and illustrations there cited. Thus we have held that the compensation paid by a State or a municipality to a consulting engineer for work on public projects may be subjected to a federal income tax (*Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 524, 70 L. ed. 384, 392, 46 S. Ct. 172) and that the income of independent contractors engaged in carrying on government enterprises may be taxed. *James v. Dravo Contr. Co.* decided December 6, 1937 (302 U. S. 134, ante, 155, 58 S. Ct. 208, 114 A. L. R. 318). We have always recognized that no constitutional implications prohibit a non-discriminatory tax upon the property of an agent of government merely because it is the property of such an agent used in the conduct of the agent's operations and necessary for the agency. *M'Culloch v. Maryland*, 4 Wheat. 316, 436, 4 L. ed. 579, 608; *Union P. R. Co. v. Peniston*, 18 Wall. 5, 33, 21 L. ed. 787, 792; *Alward v. Johnson*, 282 U. S. 509, 514, 75 L. ed. 496, 499, 51 S. Ct. 273, 75 A. L. R. 9."

In 1948 the Supreme Court in *Oklahoma Tax Commission v. Texas Co.*, 336 U. S. 342, again cited the *Union Pacific* decision in support of the following principle at page 350:

> "It has long been established that property owned by a private person and used by him in performing services for the Federal Government is subject to state and local *ad valorem* taxes."

For purposes of the decision the Texas Company was apparently treated as being a Federal Instrumentality in

carrying on the production of oil and gas on Indian lands in Oklahoma under leases approved by the Federal Government. Oklahoma levied a gross production tax in lieu of other ad valorem property taxes. In upholding the constitutionality of such a tax, the Court extended the principle enunciated in the *Union Pacific* case and in referring to the *Mountain Producers'* case, supra, stated at page 365:

> "The Mountain Producers case was not decided on narrow, merely technical or presumptive grounds. Its very foundation was a repudiation of those insubstantial bases for securing broad private tax exemptions, unjustified by actual interfering or destructive effects upon the performance of obligations to or work for the government, state or national. The decision came as the result of experience and of observation of the constant widening of the exempting process from tax to tax to tax.
>
> "Since that decision, as we have noted, the process has been reversed in direction. True intergovernmental immunity remains for the most part. But, so far as concerns private persons claiming immunity for their ordinary business operation (even though in connection with governmental activities), no implied constitutional immunity can rest on the merely hypothetical interference with governmental functions here asserted to sustain exemption."

In the foregoing cases it is clear that the United States Supreme Court has held that there was no implied constitutional immunity from state taxation under the facts of each case for the reason that the state tax did not constitute a burden on or interference with the operations of the Federal government itself. In recent years the Court has even broadened the doctrine by holding that the income of employees of the Federal government may be taxed by the respective states, and that the income of employees of the states may be taxed by the Federal government, thus reversing a long existing immunity. In *Graves v. New York*, 306 U. S. 466, the question arose whether New York could

tax the income of an attorney employed by the Home Owners' Loan Corporation. In holding that such tax was constitutional, even though the employee being taxed was engaged in the performance of a Federal governmental function, the Court stated at page 480:

> "The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from the funds of the government, either directly or indirectly."

**3. CONGRESS CANNOT CREATE A TAX EXEMPTION WHERE THERE IS NO INTERFERENCE WITH OR BURDEN UPON FEDERAL POWERS.**

The power of a state to impose taxes is limited by the doctrine of implied constitutional immunity of the means and instrumentalities employed by the Federal Government in carrying on its proper functions, when the state tax interferes with or places a burden upon Federal powers. No contention is made by the petitioner that the private personal property of service men is exempt because of this implied immunity. The contention is rather that there is an express exemption by reason of the Soldiers' and Sailors' Civil Relief Act. It is the respondent's contention that Congress cannot create a broader exemption or immunity than that implied under the constitution, and that a mere Congressional enactment cannot create a burden or interference with Federal Powers where none exists in fact.

It has never been expressly and specifically decided by this Court whether Congress may create an exemption from state taxation which is broader than that afforded by the doctrine of implied immunity. The question was raised by the Court in *Graves v. New York*, 306 U. S. 466, but it was not decided. In that case the majority opinion states:

"Whether its power of granting tax exemptions as an incident to the exercise of powers specifically granted by the Constitution can ever, in any circumstances, extend beyond the constitutional immunity of Federal agencies which courts have implied, is a question which need not now be determined."

And in the same case Mr. Justice Frankfurter in his concurring opinion stated that:

"Whether Congress may, by express legislation, relieve its functionaries from their civic obligations to pay for the benefits of the state governments under which they live is matter for another day."

While the question has not been expressly decided, there are many statements contained in cases which this court has decided, that there is nothing in the Constitution which authorizes the abridgment of the state power of taxation by national legislation.

The case of *County of Lane v. Oregon*, 74 U. S. 71, was a case where the federal law provided that United States notes should be legal tender for the payment of debts, whereas the state law provided that taxes should be paid by the counties in gold and silver coin. The court there says:

"The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the State in union there could be no such political body as the United States. * * *

"Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government. * * * The Constitution, it is true, greatly changed this condition of things. It

gave the power to tax, both directly and indirectly, to the National Government, and subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect, and of proportion in respect to direct taxes, the power was given without any express reservation. On the other hand, no power to tax exports or imports, except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the States. In respect, however, to property, business and persons within their respective limits, their power of taxation remained and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. *There is nothing in the Constitution which contemplates or authorizes any direct abridgment of this power by national legislation. To the extent just indicated it is as complete to the States as the like power, within the limits of the Constitution, is complete in Congress.*" (Italics added.)

The *State Tonnage Tax Cases*, 79 U. S. 204, 12 Wall. 204, were cases in which the state levied a tax upon steamboats owned by a resident citizen and used within the state. The court held this tax unconstitutional because it was a duty on tonnage and that the right to collect such a duty was prohibited by the Constitution unless consent of Congress was obtained. However, the court therein makes the following pertinent observations:

"Power to tax, with certain exceptions, resides with the states independent of the Federal government, and *the power, when confined within its true limits, may be exercised without restraint from any Federal authority.* They cannot, however, without the consent of Congress, lay any duty of tonnage, nor can they levy any imposts or duties on imports or exports, except what may be absolutely necessary for executing their inspection laws, as without the consent of Congress they are unconditionally prohibited from exercising any such power. Outside of those prohibitions the power of the states to tax extends to all objects within the sovereign power of the states, except the means and instruments of the Federal government. But ships and vessels owned by individuals and belonging to the commercial marine are regarded as the private property of their owners, and not as the instruments or means of the Federal government, and as such, when viewed as property, they are plainly within the taxing power of the states, as they are not withdrawn from the operation of that power by any express or implied prohibition contained in the Federal Constitution. Nathan v. Louisiana, 8 How. 82; Howell v. Maryland, 3 Gill 14.

"Argument, therefore, to show that they may be taxed as other property belonging to the citizens of the state is hardly necessary, as the opposite theory is indefensible in principle, contrary to the generally received opinion, and is wholly unsupported by any judicial determination. Direct adjudication to support that proposition is not to be found in the reported decisions of this court, but there are several cases which concede that such a tax, if levied by a state, would be legal, and no doubt is entertained that the concession is properly made. Passenger Cases, 7 How. 402; Hayes v. Steamship Co., 17 How. 598, 15 L. ed. 255." (Italics added.)

*Union Pacific Railroad Company v. Peniston*, 85 U. S. 5, considered the right of Kansas to tax the real and personal property of the Union Pacific Railroad Company which was actually located in the State of Kansas. For all purposes of the decision, the Supreme Court considered the railroad to have been a corporation organized under congressional act and *acting as an agent of the Federal Government.* It held that although the railroad itself owned the property being taxed, such property was actually used in connection with the railroad's function as an agent of the Federal Government. In affirming the right of Kansas to tax the real and personal property of the railroad located in that State, the Court stated:

> (p. 29) "That taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. • • •
>
> (p. 30) "The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised are all equally within the discretion of the legislatures to which the states commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions, or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. *There is nothing in the Constitution which contemplates or authorizes any direct abridgment of this power by national legislation.* To

the extent just indicated, it is as complete in the states as the like power within the limits of the Constitution is complete in Congress. Such are the opinions we have expressed heretofore, and we adhere to them now. (Italics added.) * * *

In *Home Insurance Company of New York v. City Council of Augusta, Georgia* (1876) 93 U. S. 116, 23 L. ed. 825, the question arose whether Augusta, Georgia could levy a license tax on a New York insurance company doing business in Augusta. In upholding the license tax, the Court stated at pages 122, 123:

"In the License Cases, 5 Wall. 462, 18 L. ed. 497, the nature of the tax exaction here in controversy was carefully considered by this court. There the revenue laws of the United States required payment in advance to be made for permission to carry on the business of selling liquor, and of selling lottery tickets. It was provided that no license so granted, or special tax so laid, should be construed to authorize any business within a State forbidden by the laws of such State, or so as to prevent the taxation by the State of the same business.

"This court held that the payment required was a special tax, levied in the manner prescribed; that the penalty provided was a mode of enforcing its payment; and that the license, when issued, was only a receipt for the tax. It was held further, that, as regards the reservation of power in favor of the States, the result would have been the same if the Acts of Congress had been silent upon the subject. This was necessarily so, because the objects taxed belonged to the internal commerce of the States, and were within their police power, and the right of Congress and the States to tax was concurrent. *Congress could, therefore, no more restrict the power of the State than the State could restrict that of Congress.*" (Italics added.)

Thus, although a Congressional Act limiting the power of the state or its political subdivisions was not involved specifically, the Court did state that Congress could not in such a situation have restricted the power of the state to tax.

That Congress cannot restrict the sovereignty of a state where action by the latter has not interfered with the power of the Federal Government was again affirmed in *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U. S. 513, 80 L. ed. 1302, 56 S. Ct. 892, decided in 1936. That case involved the question whether an irrigation district organized under the laws of Texas could avail itself of the Federal Bankruptcy Act specifically providing therefor. Although apparently the actual proceeding involved was voluntary bankruptcy, the Court stated that if a voluntary proceeding may be permitted, so may involuntary ones, and in holding the Federal Statute invalid, said at page 531:

> "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. United States v. Butler, decided January 6, 1936, 297 U. S. 1, ante, 477, 56 S. Ct. 312, 102 A. L. R. 914. The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; *it cannot be taken away by any form of legislation.* See United States v. Constantine, 296 U. S. 287, ante, 233, 56 S. Ct. 223.
>
> "Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. *But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair State powers—pass laws inconsistent with the idea of sovereignty.*" (Italics added.)

The United States is a government of delegated, enum-

erated, and limited powers. The United States Constitution gives to Congress the power to provide for the common defense and to raise and support armed forces. All other powers not expressly granted to the Federal Government are reserved to the states.

Is it necessary and proper for Congress to exempt servicemen from a non-discriminatory *ad valorem* tax upon personal property located at their place of temporary residence when no such exemption was given at their place of permanent residence? In the present case, the property had been located in Denver for all of the year 1948. Taxes had not been, and could not have been, levied by the state of permanent residence. The man in service and his family had had the benefit during all that year of the protection and services furnished by the City and County of Denver through use of its streets, parks, schools, police protection, fire protection, and other services. He had paid no other state for these services and there is no question of double payment or double taxation. The collection of such a tax from the service man would have no effect upon the providing of a common defense or the raising and supporting of armed forces. It could not place any burden upon the Federal Government. Yet, there can be no doubt but what such an exemption from taxation would affect the operation of the state and local governments. In the City and County of Denver there reside many thousands of persons who are employed by the army and navy installations, government hospitals, Post Office Department, Treasury Department, Department of the Interior, and many other departments of the United States Government. If Congress could exempt these employees from the *ad valorem* taxes on property, state sales tax, liquor tax, gasoline tax, and other taxes which supply the funds for the existence of the states, the state governments would be paralyzed, as pointed out in the *Union Pacific* case, without any corresponding advantage to the United States. There can be no doubt but what exemption from these taxes, where there is no interference with federal powers, would be an unlawful invasion of the state's sovereignty.

The petitioner passes over this important constitutional question in a couple of paragraphs in his brief by stating that there can be no doubt of Congress' power to exempt servicemen by legislation of this character as an incident of its war and defense powers, and that "the general power to provide tax exemptions *reasonably related to the performance of Federal functions* has been announced and confirmed in *Carson v. Roane-Anderson Co.*, 342 U. S. 233-234; *Pittman v. Home Owners Corp.*, 308 U. S. 21, 32-33; *Federal Land Bank v. Bismarck Co.*, 314 U. S. 95, 102-104; *Maricopa County v. Valley Bank*, 318 U. S. 357, 361; *Board of Commissioners v. Seber*, 318 U. S. 705, 715, 719." (Italics supplied.)

It should be noted that these cited cases were all cases in which an agency or instrumentality of the Federal government was directly and substantially affected by the imposition of the state tax—not cases where an employee might be affected by the tax. They were also taxes upon the instrumentality or means by which the instrumentalities or agencies carried on their governmental functions. They were not, as in the present case, taxes upon the private property of employees, which property was not used in any way in the furtherance of the war effort.

*Carson v. Roane-Anderson Co.*, was a case where a sales tax was imposed upon a contractor under a cost-plus contract with the Atomic Energy Commission. The payment of such a tax would necessarily be borne by the governmental agency and would constitute a burden upon that agency. Such a sales tax is also quite different from a property tax. The Court in that case merely says that "The Constitutional power of Congress to protect any of its agencies from state taxation (citing *Pittman v. Home Owners Corp., supra*, and *Federal Land Bank v. Bismarck Co., supra*) has long been recognized as applying to those with whom it has made authorized contracts." It is interesting to note that the Atomic Energy Act which provided the tax exemption also provided for a payment to be made in lieu of taxes thereby denied to the state government.

*Pittman v. Home Owners Loan Corp., supra,* was a case in which a recording tax was involved and the Federal Act expressly declared the Home Owners Loan Corporation to be an instrumentality of the United States. It would have no doubt been declared to be an instrumentality of the United States without such a declaration, and as such entitled to implied immunity.

*Federal Land Bank v. Bismarck Co., supra,* is a case in which the Court stated that any exercise of the powers of the Federal Government was a governmental function and that the government could protect that instrumentality, the Federal Land Bank, from state and local taxation.

*Maricopa County v. Valley Bank, supra,* was a case in which the respondent was a national banking association incorporated under the laws of the United States. It issued preferred stock which was purchased by the Reconstruction Finance Corporation. Congress provided by statute that shares of preferred stock held by the R. F. C. should not be subject to state taxation. The Court in this case says that Congress has the power to determine whether and to what extent its instrumentalities such as the R. F. C. shall be immune from state taxation.

*Board of Commissioners v. Seber, supra,* presented the question of whether lands held by Indians, subject to restrictions against alienation and encumbrances without the approval of the Secretary of Interior, were exempt from Oklahoma real estate taxes. The Secretary of the Interior had purchased the land out of restricted royalties from an oil and gas lease and had conveyed the land, subject to the restrictions on alienation and encumbrances, to the Indian. The Court held that these lands were instrumentalities of the United States by which it provided for the welfare and education of its Indian wards and that the lands were immune from taxation.

In four of these cases cited by the petitioner an instrumentality of the Federal Government was definitely involved—the Atomic Energy Commission, the Home Owners Loan Corporation, the Federal Land Bank, and the Re-

construction Finance Corporation. In the fifth the Court said that the land was an instrumentality of the Government by which the United States provided for the welfare of its Indian wards.

The private personal property of a member of the Armed Forces could not be an instrumentality of the Federal Government which could be immune from state taxation, either impliedly or by express act of Congress.

We submit that under the tests theretofore established by this Court, the instrumentalities involved in all five of these cases would have been exempt by implication without express legislative enactment. All of the subjects of the tax were governmental instrumentalities and not mere employees. And all of those taxes would have placed a burden upon the Federal Government and interfered with its express powers. They were not, as in the present case, taxes upon the private property of employees, which property was not used in any way in the performance of their governmental duties.

Taking at its face value the statement of the Petitioner that Congress has "the general power to provide tax exemptions *reasonably related to the performance of federal functions,*" we submit that the exemption of private personal property of a man in the armed forces does not even meet the test of the rule stated by the Petitioner, for the reason that such an exemption of privately owned personal property is not reasonably related to the exercise of the war and defense powers.

Under any of the tests given in the cases determining the implied immunity of federal instrumentalities from state taxation, a non-discriminatory tax upon the personal property belonging to a serviceman and actually located within a state and used by him and his family therein for the whole of the calendar year, would not be immune from state taxation by that state. Such a tax would not interefere with the powers of, nor place any direct burden upon, the Federal Government; such a tax is a tax upon property and not a taxation of the means employed in performing services

for the United States; such a tax is upon property which was not used in any manner in the performance of any governmental function; such tax is upon the property of an employee rather than upon the property of any governmental agency or instrumentality; and such a tax is not paid by the Government from its funds but it is paid from the private funds of the employee.

These same tests should be applied in determining the power of Congress to grant specific immunity from state taxation to governmental instrumentalities.

## CONCLUSION

The judgment of the Supreme Court of Colorado should be affirmed.

Respectfully submitted,

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APPENDIX

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888 54 Stat. 1178:

> Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

Senate Report No. 959, 78th Cong., 2d Sess:

> The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.
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> The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on

residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subject to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Report of House Military Affairs Committee (1944):

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as to income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.